

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of
Issues Against:

DERRICK HUNTER DIAMOND
1875 Sherington Place, #S-307
Newport Beach, CA 92663

Applicant/Respondent.

Case No. SI-2005-30

OAH No. L2005090402

DECISION AFTER NONADOPTION

On December 13, 2005, Administrative Law Judge James Ahler, Office of Administrative Hearings, State of California heard this matter in Costa Mesa, California.

Jennifer L. Weck, Deputy Attorney General, represented complainant Carol Sigmann, the Executive Officer of the California Board of Accountancy.

Frederick M. Ray, Attorney at Law, represented applicant/respondent Derrick Hunter Diamond, who was present throughout the administrative hearing.

The matter was submitted on December 13, 2005.

The California Board of Accountancy ("Board") declined to adopt the Proposed Decision of the Administrative Law Judge and issued an Order of Nonadoption on January 25, 2006. That Order stated the Board would decide the case on the record, including the transcript of the hearing and upon such written arguments as the parties might wish to submit. Written argument being received by both parties, the entire record, including the transcript and exhibits of said hearing, having been read and considered by the Board, pursuant to Government Code Section 11517, the Board hereby makes the following final decision and order:

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 31, 2005, complainant Carol Sigmann, the Executive Officer of the California Board of Accountancy (the Board), Department of Consumer Affairs, State of California, signed the Statement of Issues in her official capacity.

The Statement of Issues and other required jurisdictional documents were served on applicant/respondent Derrick Hunter Diamond (Diamond or respondent).

Counsel timely filed a Notice of Defense on Diamond's behalf.

On December 13, 2005, the administrative record was opened. Jurisdictional documents were presented, sworn testimony and documentary evidence was received, closing arguments were given, the record was closed and the matter was submitted.

License History

2. On October 12, 1984, the Board issued Certified Public Accountant Certificate No. 41110 to Diamond, which was subject to renewal every two years. The certificate was not renewed and it expired on August 31, 1986, after which it was placed in a delinquent status.

On September 1, 1991, the certificate was canceled under Business and Professions Code section 5070.7 for the failure to renew the certificate within five years of its expiration.

There is no history of any discipline having been imposed by the Board against Certified Public Accountant Certificate No. 41110.

The Application for Licensure

3. On May 19, 2003, Diamond filed his application for the issuance of a certified public accountant license with the Board. In that application, which Diamond signed under penalty of perjury on May 18, 2003, he admitted that he was convicted of driving under the influence in 1986 and in 1994, in addition to disclosing all of the convictions referred to in Factual Findings 4-6 below.

Diamond's Convictions

4. On July 5, 1995, Diamond was convicted on his plea of guilty of violating Penal Code section 496, subdivision (a) (Receiving Stolen Property), a felony, and Vehicle Code section 10851 (Grand Theft Auto), a felony, in the Superior Court of California, Orange County, in Case No. 94SF0336 entitled *People of the State of California v. Derrick Hunter Diamond*.

On July 5, 1995, Diamond was sentenced to serve one year, four months in the custody of the California Department of Corrections. Diamond served seven months at R. J. Donovan State Correctional Facility and was released on parole. Terms and conditions his parole included requirements that he abstain from the use of alcohol and illegal drugs, submit to chemical tests as requested, and obey all laws.

5. On March 29, 1996, Diamond was convicted on his plea of guilty of violating Penal Code Section 653f, subdivision (d) (Solicitation of a Criminal Act involving a Controlled Substance), a misdemeanor, and a violation of Penal Code section 853.7 (Failure to Appear in Court as Promised), a misdemeanor, in the Municipal Court of California, Orange County, Harbor Judicial District, in Case No. 95HM05843 entitled *People of the State of California v. Derrick Hunter Diamond*.

On March 29, 1996, Diamond was sentenced to serve 30 days in custody. Credit was given for time previously served.

6. On July 16, 1997, Diamond was convicted by a jury of violating Penal Code section 664-487, subdivision (a) (Attempted Grand Theft), a misdemeanor, Penal Code section 484f (Fraudulent Use of Access Card), a misdemeanor, and Penal Code section 484e (Acquiring an Access Card Without Consent), a misdemeanor, in the Superior Court of California, Orange County, Harbor Justice Center, in Case No. SH97SM3496 entitled *People of the State of California v. Derrick Hunter Diamond*.

On July 16, 1997, Diamond was placed on conditional probation for three years and was order to serve 180 days in custody. Diamond was given credit for any time he might serve in state prison. Diamond's parole was violated upon his convictions and he was recommitted to the California Department of Corrections to serve the balance of his prison term. He served time at the California Institution for Men in Chino and at the California Rehabilitation Center in Norco before being released on parole on December 24, 1997.

Circumstances of the Offenses

7. *The DUI Convictions:* Diamond had no real recollection of the 1986 or the 1994 driving under the influence convictions. He believed he was arrested and charged with driving under the influence of alcohol, not drugs, on each occasion. After at least the first conviction Diamond was required to attend and complete a drinking driver's program, as well as pay fines and fees, and obey all laws.

8. *The July 1995 Convictions:* By the early 1990s, Diamond had developed a robust substance abuse problem. He stole about half a dozen vehicles and he knowingly purchased about a dozen stolen vehicles for resale, all to finance his drug habit. He was arrested twice, the first time on December 30, 1993, for having possession of a stolen Volkswagen Van (the receiving stolen property charge) and later on April 28, 1994, for driving a stolen Ford Escort (the grand theft auto charge). Diamond's convictions on these charges occurred well after the offenses were committed.

9. *The March 1996 Convictions:* On June 23, 1995, about a month before he pled guilty to the receiving stolen property and grand theft auto charges and began serving time in state prison, Diamond drove into an area of Costa Mesa where he knew crack cocaine was being sold. Diamond asked an undercover police officer to sell him

crack cocaine, was given a quantity of a counterfeit drug and paid the undercover officer about \$40. Diamond was immediately arrested on solicitation charges. He signed a promise to appear and was released the evening of his arrest. Diamond did not appear in court as promised because by then he was serving time in state prison. Diamond pled guilty to the underlying charges following his release from prison and was given credit for time served.

10. *The July 1997 Convictions:* Within a couple of weeks after he was released from state prison and was placed on parole for the first time, Diamond resumed using illegal drugs. He quickly became addicted to crack cocaine and crystal meth again. One of Diamond's associates at the time was Harvey Anderson (Anderson).

In June 1997, Diamond and Anderson rented a motel room in San Clemente for a drug binge. While they were at the motel and under the influence, they attempted to use information Diamond had obtained from his employment as an accountant to purchase goods from Gary's Island, a clothing store. They planned to resell the goods to obtain more drugs. Someone became suspicious, law enforcement was contacted and Diamond and Anderson were arrested on June 5, 1997, which was the last day Diamond used illegal substances. Diamond remained in county jail through the date of his conviction in July 1997, after which he returned to state prison on the parole violation.

Diamond's Testimony and Other Evidence

11. Diamond is 47 years old. He was born in San Diego and grew up in San Diego, Australia, Houston, and the San Francisco Bay Area. Diamond graduated from Redwood High School in Larkspur, California, in 1976.

12. Diamond attended San Diego State University for one year, the United States Merchant Marine Academy for two and a half years, and California State University, Long Beach for a year. In December 1980, Diamond was awarded a Bachelor of Science degree in Business Administration with an emphasis in Accounting from California State University, Long Beach.

13. After receiving his bachelor's degree, Diamond went to work in the public accounting field. He was employed by Deloitte Haskins & Sells, a Big Eight accounting firm, where he gained the practical experience and training required to qualify for the examination and licensure as a certified public accountant.

In the mid-1980's, Diamond decided he would rather work for one client than work as a public accountant. It was around this time that he began to develop a serious substance abuse problem. Diamond worked as a comptroller or CFO from several companies including Advanced Micro Devices and an Orange County mail delivery/courier firm. He held this kind of employment for about five years.

In the early 1990s, Diamond went to work for William Hitchcock (Hitchcock), the owner of Bottom Line Financial, providing accounting services as an independent contractor. During this period of time, Diamond's addiction blossomed and he engaged in the theft and sale of stolen motor vehicles. He was eventually caught and sentenced to state prison.

14. Following his release from the R.J. Donovan State Correctional Facility, Diamond began using illegal drugs – crystal meth and cocaine – within a matter of weeks. He said he made no real effort to attain sobriety and become drug free, although he attended AA and NA meetings on occasion. His lifestyle really changed very little; he continued to associate with other drug users and other persons who were not law abiding.

During this period, Diamond returned to work for Hitchcock. It was in the course of this employment that he obtained the confidential information he and Anderson later attempted to use which ultimately resulted in his arrest and misdemeanor convictions of attempted grand theft, the fraudulent use of an access card and acquiring an access card without the cardholder's consent. By July 5, 1997, Diamond had hit bottom.

15. Diamond described his descent into full-blown drug addiction in a harrowing, compelling fashion. According to Diamond, little by little he started falling in with the wrong crowd. His experimental, then casual use of illegal drugs increased to a weekly, then a daily habit. Ultimately, just about everything Diamond did away from his work supported or was related to his drug addiction. Diamond admitted drugs gradually and increasingly took over his life for about ten years, a time when he lost his moral compass, his straight friends, and the love of his family.

16. Considerable evidence was introduced through the testimony of Diamond's mother and sister about Diamond's physical, emotional and spiritual decline from the late 1980's through the mid-1990s. According to his mother, Diamond became very overweight, untrustworthy and totally irresponsible. According to his sister, Diamond was surly and grumpy most of the time. Each of them was aware Diamond was often under the influence of alcohol or drugs when he was in their presence. Each said she did not enjoy being around Diamond during this period of his life. Neither visited Diamond when he was in state prison.

17. Something happened during Diamond's last stay in state prison, which Diamond described as a very frightening, most sobering experience. He was required to have constant contact with gang members and other vicious inmates. He came to mourn the loss of his liberty and pleasures he associated with being free. Diamond took a much closer look at himself, his circumstances and the poor choices he had made in his life. He realized the depth of his addiction. Diamond became committed to personal change and remaining law abiding upon his release. He was released from the California Rehabilitation Center on Christmas Eve 1997.

18. Diamond returned to the Costa Mesa area and got in touch with his family. They loaned him enough money to rent an apartment, which kept Diamond from living in a motel room, a living arrangement he associated with illegal drug use. Diamond cut off all contact with persons, places and things that he associated with drug use. While he craved illegal drugs for the first six to twelve months after he was released, he attended NA and AA meetings and managed not to use illegal drugs or alcohol.

19. In 1998, Diamond again obtained employment with Hitchcock as an accountant. When Hitchcock sold his business in 1999, Diamond gained employment as an accountant with Corbin & Wertz, a large accounting firm in Orange County. According to Diamond, he managed the small business department and was responsible for reviewing taxes, tax planning and providing general accounting services. Diamond was employed by Corbin & Wertz until January 2003, when he became employed by M. Blank & Company, Certified Public Accountants.

20. Marilyn M. Blank (Blank), who has been a licensed CPA since 1989, owns her own accounting practice in Orange County. Blank has employed Diamond since January 2003, primarily as a tax preparer.

Diamond disclosed the fact of his convictions and his prior substance abuse problems when Blank offered him employment, but he was not asked about the details underlying those convictions and he did not volunteer them.

Blank described Diamond as a hardworking individual who works at least 40 hours a week, and far more in tax season. She said Diamond has been on time, all the time, every single day since he was hired, except for just one sick day. Diamond has had access to confidential client information and other sensitive materials. He has never betrayed Blank's trust and no client has complained about him. He has never engaged in any kind of dishonesty. Diamond is respected and well liked by his fellow employees.

21. Diamond now gets together with his mother and sister once every two weeks or so, and he calls his mother on the telephone nearly every day. According to his mother, Diamond is a delight to be around. He is attentive to her needs and is totally trustworthy. He exercises regularly, goes to work and meets all of his responsibilities. Diamond's sister notes a huge change in her brother's attitude upon his release from state prison in December 1997. He was remorseful and humble. He sought guidance from others. Neither Diamond's mother nor his sister has ever seen him under the influence of drugs or alcohol since he was released from state prison in 1997.

22. Frank Headrick (Headrick), the owner of P.O.S.itive Business Solutions, has known Diamond for approximately six years. Headrick met Diamond when each of them worked for William Hitchcock in the late 1990s. According to Headrick, Diamond disclosed the fact of his prior addiction and his criminal convictions, and he was "one of the most forthright and honest people I have ever met."

Headrick testified Diamond was a very hardworking individual who had a reputation among his colleagues for honesty and trustworthiness. Headrick lived in the same apartment complex as Diamond for several years and observed him at work and away from work on a regular basis. Headrick testified he has never seen Diamond under the influence of drugs or alcohol.

In a letter of reference, Headrick wrote:

"I have had the pleasure of collaborating with Derrick on many projects over the years. During that time, I have seen tremendous progress in him. He lives the life of a model citizen, goes to work every day and to my knowledge has not used any illegal substances or been in any kind of legal trouble in the past six years. He truly has turned his life around in a very positive way, and I am proud to call him my friend."

23. Diamond offered letters of reference from five persons who were not called to testify at the administrative hearing: Mark Carvalho, James Davino, Debbie Elton, William Hitchcock, and Michael Smith. Each of these persons had knowledge of Diamond, his past legal problems and past substance abuse. Each believed him to be of good moral character and each described positive changes in him since his release from state prison in 1997.

24. Diamond submitted documentary evidence which corroborated his testimony concerning the continuing education he has taken in the accounting field since 2003.

25. Diamond testified in a candid fashion about his problems in the 1980s and 1990s, how he came to recognize that his lifestyle was unrewarding and self-defeating, and the efforts he has made to rehabilitate himself.

Diamond disclosed all his convictions in his most recent application for licensure as a public accountant, and it was not established that he was anything other than forthright in the application he previously filed with the Board (which was denied).

Diamond's early path towards recovery from substance abuse had a familiar theme – attending numerous AA and NA meetings. However, Diamond determined that he did not need the formal structure associated with those self-help programs and sought a more personal path towards recovery. That self-directed path has included maintaining a steady residence, maintaining gainful employment, attending occasional NA meetings, taking time to meditate in the mornings, a daily regimen of physical exercise, being with family on a frequent basis, staying at home on weekday nights, going to sporting events with friends on the weekends and, most importantly, severing all ties with all persons, places and things he associated with his previous drug use. Diamond occasionally drinks a beer (he testified that he has had as many as four beers on one occasion, the 2004 Super Bowl) and has a glass of wine with his family on special holidays. Diamond acknowledged that AA and NA programs claim the

infrequent consumption of alcoholic beverages is a "slippery slope" that usually results in a return to alcoholism or drug addiction, but so far Diamond said he has not resumed the use of illegal drugs and he said he has not become intoxicated on those infrequent occasions when he consumes alcoholic beverages.

Diamond has not been arrested for any crime since he was released from state prison in December 1997. Diamond successfully completed his parole. No evidence was offered to establish Diamond made any effort to expunge his criminal convictions under Penal Code section 1203.4.

The most impressive part of Diamond's presentation concerning his rehabilitation – apart from the fact that he has had no adverse encounters with the law since his release from state prison in December 1997 – was his thoughtful and compelling testimony itself. Diamond was not defensive about his past; he was sincere and totally open about his current situation, and his description of his rehabilitation program demonstrated considerable self-awareness.

Evaluation

26. California Code of Regulations, title 16, section 99.1 sets forth the Board's criteria to evaluate an applicant's present eligibility for a license. Relevant factors related to Diamond's rehabilitation are summarized below and are set forth more fully in Factual Findings 15 – 25.

Diamond developed enormous substance abuse problems in the 1980s which resulted in alcoholism and an addiction to crack cocaine and crystal meth. The nearly inevitable outcome of this lifestyle included Diamond's acquisition, possession and sale of stolen cars and other theft-related activities from the mid-1980s through the mid-1990s. Over that decade, Diamond was convicted of two theft-related felonies, for which he spent time in state prison, and three theft-related misdemeanors, for which he was promptly returned to state prison on a parole violation. He was also convicted of offenses involving the excessive use of alcohol or the attempt to acquire illegal drugs.

Diamond was in his mid-thirties when he suffered these problems. He was old enough that he should have known better, but engaged in a pattern of drug-seeking, irresponsible criminal behavior for the better part of a decade. After being convicted, he violated both the terms of his probation and his parole. Diamond was not a good citizen.

Clearly, this is not the kind of behavior the public expects of a person who seeks to hold a certificate as a certified public accountant, a position of trust requiring the utmost honesty and fidelity to ethical principles. Any one of the theft-related offenses, by itself, provides cause to deny Diamond licensure as a certified public accountant. However, rehabilitation is measured not only by an applicant's entire criminal history, but also by what the applicant has done more recently. Rehabilitation in this matter was established by Diamond's sincere testimony and by the testimony and other evidence offered by those who know him best.

Diamond has not been arrested since December 1997, which is entirely consistent with his claim of freedom from the use of illegal drugs and the moderate use of alcoholic beverages. He has maintained a stable residence and has maintained gainful employment, which is inconsistent with an addiction to illegal drugs or alcoholism. He was forthright in disclosing his criminal background when he was offered employment and when he filed his applications for licensure with the Board. Those persons who know Diamond best – his family and friends – described the constructive and positive evolution of Diamond's attitudes and activities. While Diamond's current program in dealing with his alcohol and drug-related problems is somewhat unique, it appears to be working.

Under all the circumstances, it is concluded that Diamond's period of sobriety and his state of rehabilitation have advanced to the point where it would not be contrary to the public interest to issue a probationary certificate to Diamond.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. The standard of proof is a preponderance of the evidence. See, *California Administrative Hearing Practice* (Second Edition), "The Hearing Process," sections 7.51 – 7.53, pp. 365 – 367, and the cases cited therein.

Applicable Statutes

2. Business and Professions Code section 480 provides in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime . . .

* * * *

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made"

3. Business and Professions Code section 5100 provides in part:

"After notice and hearing the board may . . . refuse to renew any permit or certificate . . . for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant”

4. Business and Professions Code section 5110 provides in part:

“(a) After notice and an opportunity for a hearing, the board may . . . deny an application for a license or registration to any individual who has committed any of the following acts:

* * * *

(4) Any act that if committed by an applicant for licensure would be grounds for denial of a license or registration under Section 480 or if committed by a licensee or a registrant would be grounds for discipline under Section 51000”

Substantial Relationship

5. A statute can constitutionally bar a person from practicing a lawful profession only for reasons related to his fitness or competence to practice that profession. The state’s power to regulate a profession cannot be used arbitrarily to penalize conduct having no bearing upon fitness for its practice. The requirement of such a relation is constitutionally mandated. Whether this requirement tying the conduct to the fitness or competence to practice a profession is termed a “nexus” or a “relationship,” the inherent meaning is the same. There must be a logical connection between the conduct complained about and one’s fitness or competence to practice the profession or to the qualifications, functions, or duties of the profession in question. See, *Clare v. California State Board of Accountancy* (1992) 10 Cal. App. 4th 294, 302.

Applicable Regulation re Substantial Relationship

6. California Code of Regulations, title 16, section 99 provides in part:

“For the purposes of denial . . . of a certificate or permit . . . a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant . . . if to a substantial degree it evidences present or potential unfitness of a certified public accountant . . . to perform the functions authorized by his certificate . . . in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Fiscal dishonesty or breach of fiduciary responsibility of any kind”

Rehabilitation

7. Rehabilitation is a “state of mind.” The law looks with favor upon rewarding one who has achieved reformation and regeneration with the opportunity to

serve. See, *Pacheco v. State Bar* (1987) 43 Cal. 3d 1041, 1058. And, the evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. *Kwasnik v. State Bar* (1990) 50 Cal. 3d 1061, 1070.

Applicable Regulation re Rehabilitation

8. California Code of Regulations, title 16, section 99.1 provides in part:

"When considering the denial of a certificate or permit under Section 480 of the Business and Professions Code . . . the board, in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension or revocation.
- (3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) and (2).
- (4) The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the applicant or licensee."

9. Relevant information related to Diamond's rehabilitation is summarized in Factual Finding 26 and is set forth more fully in Factual Findings 15 – 25.

Cause Exists to Issue a Probationary or Conditional License

10. Cause exists not to grant Diamond's application for an unconditioned license as a certified public accountant under Business and Professions Code section 480. However, Diamond has established sufficient rehabilitation to conclude that it would not be contrary to the public interest to issue him a probationary license subject to conditions as specified below.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

Derrick Hunter Diamond's application for the issuance of a public accountant license, which was filed with the California Board of Accountancy on May 19, 2003, is hereby granted and immediately revoked. This order of revocation, however, is stayed and the licensee issued to Derrick Hunter Diamond shall be placed on probation for a period of five years subject to and upon the following terms and conditions.

1. Obey All Laws

Respondent shall obey all federal, California, and other states' and local laws, including those rules relating to the practice of public accountancy in California.

2. Submit Written Reports

Respondent shall submit, within 10 days of completion of the quarter, written reports to the board on a form obtained from the board. Respondent shall submit under penalty of perjury such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the board or its representatives.

3. Personal Appearances

Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the board or its designated representatives, provided such notification is accomplished in a timely manner.

4. Comply With Probation

Respondent shall fully comply with the terms and conditions of the probation imposed by the board and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of respondent's compliance with probation terms and conditions.

5. Practice Investigation

Respondent shall be subject to, and shall permit, a practice investigation of his professional practice. Such a practice investigation shall be conducted by representatives of the board, provided notification of such review is accomplished in a timely manner.

6. Comply With Citations

Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

7. Written Notice of Any Arrest

If respondent is arrested for any offense while is on probation, he shall immediately report the fact of his arrest to his Board probation monitor within forty-eight hours of his arrest. Respondent shall disclose the date of the arrest, the charges for which he was arrested, the identity and address of the arresting agency, and any date he is required to appear in court. The failure to make a timely report shall constitute a violation of probation.

8. Notice to Prospective Employer

Before accepting any employment as a licensed certified public accountant with any person or accounting firm, respondent must first provide his prospective employer with a copy of the Board's Decision in this matter. Respondent shall provide the Board with the prospective employer's written acknowledgement that the prospective employer has read the Decision in this matter and is aware of the terms and conditions of probation.

9. Restricted Practice

Respondent shall be prohibited from self-employment and solo practice.

10. Drugs – Abstain From Use

Respondent shall completely abstain from the personal use of all psychotropic drugs except when the same are lawfully prescribed.

11. Drugs – Screening

Respondent shall participate or shall have participated in a drug screening program acceptable to the Board and shall have reports submitted to the Board by the screening program. Respondent is responsible for all costs associated with said screening and reporting.

12. Biological Fluid Testing

Respondent, at any time during the period of probation, shall fully cooperate with the Board or its designee in its supervision and

investigation of compliance with the terms and conditions of probation, and he shall, when requested, submit to such tests and samples as the Board or its designee may require for the detection of narcotics, hypnotic, dangerous drugs, or other controlled substances or levels of alcohol. Respondent shall be responsible for all costs associated with this investigation and testing.

13. Tolling of Probation for Out-of-State Residence/Practice

In the event respondent should leave California to reside or practice outside this state, he must notify the board in writing of the dates of departure and return. Periods on non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the board costs, and make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the board.

14. Violation of Probation

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and impose such discipline as is deemed warranted, including revocation of respondent's certificate. If an accusation or a petition to revoke probation is filed against respondent during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.


15. Completion of Probation

Upon successful completion of probation, respondent's certificate will be full restored.

IT IS SO ORDERED.

The effective date of this Order is June 30, 2006

DATED: May 31, 2006


RONALD BLANC
President
California Board of Accountancy



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NOTICE OF RECEIPT OF TRANSCRIPTS AND EXHIBITS

IN THE MATTER OF CALIFORNIA BOARD OF ACCOUNTANCY

VS

DERRICK HUNTER DIAMOND, APPLICANT

ACCUSATION AND NON-ADOPTION OF PROPOSED DECISION

This will notify all parties to this action that the transcripts and exhibits have been received with reference to the above matter. As you were previously notified in our letter dated January 25, 2006, you may now submit written arguments (i.e., briefs) for the Board's consideration. Please submit your written argument no later than **March 23, 2006**.

The Board will consider this matter and you will be notified thereafter concerning the Board's decision.


CAROL SIGMANN
Executive Officer
California Board of Accountancy

c: Jennifer L. Weck, Deputy Attorney General
Frederick Ray, Esq.

February 21, 2006

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DEPARTMENT OF CONSUMER AFFAIRS
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against:

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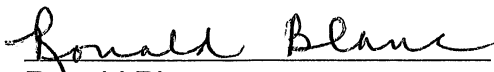
OAH No.: L2005090402

Applicant/Respondent

ORDER OF NONADOPTION OF PROPOSED DECISION

Pursuant to Section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is not adopted. The California Board of Accountancy will decide the case upon record, including the transcript of the hearing held on December 13, 2005, and upon such written argument as the parties may wish to submit. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

IT IS SO ORDERED this 25th day of January, 2006



Ronald Blanc
Board President

BEFORE THE
BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

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PROPOSED DECISION

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There is no history of any discipline having been imposed by the Board against Certified Public Accountant Certificate No. 41110.

The Application for Licensure

3. On May 19, 2003, Diamond filed his application for the issuance of a certified public accountant license with the Board. In that application, which Diamond signed under penalty of perjury on May 18, 2003, Diamond admitted he was convicted of driving under the influence in 1986 and in 1994, in addition to disclosing all of the convictions referred to in Factual Findings 4-6 below.

Diamond's Convictions

4. On July 5, 1995, Diamond was convicted on his plea of guilty of violating Penal Code section 496, subdivision (a) (Receiving Stolen Property), a felony, and Vehicle Code section 10851 (Grand Theft Auto), a felony, in the Superior Court of California, Orange County, in Case No. 94SF0336 entitled *People of the State of California v. Derrick Hunter Diamond*.

On July 5, 1995, respondent was sentenced to serve one year, four months in custody of the California Department of Corrections. Diamond served seven months at R. J. Donovan State Correctional Facility and was released on parole. Terms and conditions of Diamond's parole included requirements that he abstain from the use of alcohol and illegal drugs, submit to chemical tests as requested, and obey all laws.

5. On March 29, 1996, Diamond was convicted on his plea of guilty of violating Penal Code Section 653f, subdivision (d) (Solicitation of a Criminal Act Involving a Controlled Substance), a misdemeanor, and a violation of Penal Code section 853.7 (Failure to Appear in Court as Promised), a misdemeanor, in the Municipal Court of California, Orange County, Harbor Judicial District, in Case No. 95HM05843 entitled *People of the State of California v. Derrick Hunter Diamond*.

On March 29, 1996, Diamond was sentenced to serve 30 days in custody. Credit was given for time previously served.

6. On July 16, 1997, Diamond was convicted by a jury of violating Penal Code section 664-487, subdivision (a) (Attempted Grand Theft), a misdemeanor, Penal Code section 484f (Fraudulent Use of Access Card), a misdemeanor, and Penal Code section 484e (Acquiring an Access Card Without Consent), a misdemeanor, in the Superior Court of California, Orange County, Harbor Justice Center, in Case No. SH97SM3496 entitled *People of the State of California v. Derrick Hunter Diamond*.

On July 16, 1997, Diamond was placed on conditional probation for three years and was ordered to serve 180 days in custody. Diamond was given credit for any time he might serve in state prison. Diamond's parole was violated upon his convictions and he was recommitted to the California Department of Corrections to serve the balance of his prison term. He served time at the California Institution for Men in Chino and at the California Rehabilitation Center in Norco before being released on parole on December 24, 1997.

Circumstances of the Offenses

7. *The DUI Convictions:* Diamond had no real recollection of the 1986 or the 1994 driving under the influence convictions. He believed he was arrested and charged with driving under the influence of alcohol, not drugs, on each occasion. After at least the first conviction Diamond was required to attend and complete a drinking driver's program, as well as pay fines and fees, and obey all laws.

8. *The July 1995 Convictions:* By the early 1990s, Diamond had developed a robust substance abuse problem. He stole about half a dozen vehicles and he knowingly purchased about a dozen stolen vehicles for resale, all to finance his drug habit. He was arrested twice, the first time on December 30, 1993, for having possession of a stolen Volkswagen Van (the receiving stolen property charge) and later on April 28, 1994, for driving a stolen Ford Escort (the grand theft auto charge). Diamond's convictions on these charges occurred well after the offenses were committed.

9. *The March 1996 Convictions:* On June 23, 1995, about a month before he pled guilty to the receiving stolen property and grand theft auto charges and began serving time in state prison, Diamond drove into an area of Costa Mesa where he knew crack cocaine was being sold. Diamond asked an undercover police officer to sell him crack cocaine, was given a quantity of a counterfeit drug and paid the undercover officer about \$40. Diamond was immediately arrested on solicitation charges. Diamond signed a promise to appear and was released the evening of his arrest. Diamond did not appear in court as promised because by then he was serving time in state prison. Diamond pled guilty to the underlying charges following his release from prison and was given credit for time served.

10. *The July 1997 Convictions:* Within a couple of weeks after he was released on from state prison and was placed on parole for the first time, Diamond resumed using illegal drugs. He quickly became addicted to crack cocaine and crystal meth again. One of Diamond's associates at the time was Harvey Anderson (Anderson).

In June 1997, Diamond and Anderson rented a motel room in San Clemente for a drug binge. While they were at the motel and under the influence, they attempted to use information Diamond had obtained from his employment as an accountant to purchase goods from Gary's Island, a clothing store. They planned to resell the goods to obtain more drugs. Someone became suspicious, law enforcement was contacted and Diamond and Anderson were arrested on June 5, 1997, which was the last day Diamond used illegal substances. Diamond remained in county jail through the date of his conviction in July 1997, after which he returned to state prison on the parole violation.

Diamond's Testimony and Other Evidence

11. Diamond is 47 years old. He was born in San Diego and grew up in San Diego, Australia, Houston, and the San Francisco Bay Area. Diamond graduated from Redwood High School in Larkspur, California, in 1976.

12. Diamond attended San Diego State University for one year, the United States Merchant Marine Academy for two and a half years, and California State University, Long Beach for a year. In December 1980, Diamond was awarded a Bachelor of Science degree in Business Administration with an emphasis in Accounting from California State University, Long Beach.

13. After receiving his bachelor's degree, Diamond went to work in the public accounting field. He was employed by Deloitte Haskins & Sells, a Big Eight accounting firm, where he gained the practical experience and training required to qualify for the examination and licensure as a certified public accountant.

In the mid-1980s, Diamond decided he would rather work for one client than work as a public accountant. It was around this time that Diamond began to develop a serious substance abuse problem. Diamond worked as a comptroller or CFO for several companies including Advanced Micro Devices and an Orange County mail delivery/courier firm. He held this kind of employment for about five years.

In the early 1990s, Diamond went to work for William Hitchcock (Hitchcock), the owner of Bottom Line Financial, providing accounting services as an independent contractor. During this period of time, Diamond's addiction blossomed and he engaged in the theft and sale of stolen motor vehicles. Diamond was eventually caught and sentenced to state prison.

14. Following his release from the R.J. Donovan State Correctional Facility, Diamond began using illegal drugs – crystal meth and cocaine – within a matter of weeks. He said he made no real effort to attain sobriety and become drug free, although he attended

AA and NA meetings on occasion. His lifestyle really changed very little; he continued to associate with other drug users and other persons who were not law abiding.

During this period, Diamond returned to work for Hitchcock. It was in the course of this employment that Diamond obtained the confidential information he and Anderson later attempted to use which ultimately resulted in Diamond's arrest and misdemeanor convictions of attempted grand theft, the fraudulent use of an access card and acquiring an access card without the cardholder's consent. By July 5, 1997, Diamond had hit bottom.

15. Diamond described his descent into full-blown drug addiction in a harrowing, compelling fashion. According to Diamond, little by little he started falling in with the wrong crowd. His experimental, then casual use of illegal drugs increased to a weekly, then a daily habit. Ultimately, just about everything Diamond did away from his work supported or was related to his drug addiction. Diamond admitted drugs gradually and increasingly took over his life for about ten years, a time when he lost his moral compass, his straight friends, and the love of his family.

16. Considerable evidence was introduced through the testimony of Diamond's mother and sister about Diamond's physical, emotional and spiritual decline from the late 1980s through the mid-1990s. According to his mother, Diamond became very overweight, untrustworthy and totally irresponsible. According to his sister, Diamond was surly and grumpy most of the time. Each of them was aware Diamond was often under the influence of alcohol or drugs when he was in their presence. Each said she did not enjoy being around Diamond during this period of his life. Neither visited Diamond when he was in state prison.

17. Something happened during Diamond's last stay in state prison, which Diamond described as a very frightening, most sobering experience. He was required to have constant contact with gang members and other vicious inmates. He came to mourn the loss of his liberty and pleasures he associated with being free. Diamond took a much closer look at himself, his circumstances and the poor choices he had made in his life. He realized the depth of his addiction. Diamond became committed to personal change and remaining law abiding upon his release. Diamond was released from the California Rehabilitation Center on Christmas Eve 1997.

18. Diamond returned to the Costa Mesa area and got in touch with his family. They loaned him enough money to rent an apartment, which kept Diamond from living in a motel room, a living arrangement he associated with illegal drug use. Diamond cut off all contact with persons, places and things that he associated with drug use. While he craved illegal drugs for the first six to twelve months after he was released, he attended NA and AA meetings and managed not to use illegal drugs or alcohol.

19. In 1998, Diamond again obtained employment with Hitchcock as an accountant. When Hitchcock sold his business in 1999, Diamond gained employment as an accountant with Corbin & Wertz, a large accounting firm in Orange County. According to Diamond, he managed the small business department and was responsible for reviewing

taxes, tax planning and providing general accounting services. Diamond was employed by Corbin & Wertz until January 2003, when he became employed by M. Blank & Company, Certified Public Accountants.

20. Marilyn M. Blank (Blank), who has been a licensed CPA since 1989, owns her own accounting practice in Orange County. Blank has employed Diamond since January 2003, primarily as a tax preparer.

Diamond disclosed the fact of his convictions and his prior substance abuse problems when Blank offered him employment, but he was not asked about the details underlying those convictions and he did not volunteer them.

Blank described Diamond as a hardworking individual who works at least 40 hours a week, and far more in tax season. She said Diamond has been on time, all the time, every single day since he was hired, except for just one sick day. Diamond has had access to confidential client information and other sensitive materials. Diamond has never betrayed Blank's trust and no client has complained about him. He has never engaged in any kind of dishonesty. Diamond is respected and well liked by his fellow employees.

21. Diamond now gets together with his mother and sister once every two weeks or so, and he calls his mother on the telephone nearly every day. According to his mother, Diamond is a delight to be around. He is attentive to her needs and is totally trustworthy. He exercises regularly, goes to work and meets all of his responsibilities. Diamond's sister noted a huge change in her brother's attitude upon his release from state prison in December 1997. He was remorseful and humble. He sought guidance from others. Neither Diamond's mother nor his sister has ever seen him under the influence of drugs or alcohol since he was released from state prison in 1997.

22. Frank Headrick (Headrick), the owner of P.O.S.itive Business Solutions, has known Diamond for approximately six years. Headrick met Diamond when each of them worked for William Hitchcock in the late 1990s. According to Headrick, Diamond disclosed the fact of his prior addiction and his criminal convictions, and he was "one of the most forthright and honest people I have met."

Headrick testified Diamond was a very hardworking individual who had a reputation among his colleagues for honesty and trustworthiness. Headrick lived in the same apartment complex as Diamond for several years and observed Diamond at work and away from work on a regular basis. Headrick testified he has never seen Diamond under the influence of drugs or alcohol.

In a letter of reference, Headrick wrote:

"I have had the pleasure of collaborating with Derrick on many projects over the years. During that time, I have seen tremendous progress in him. He lives the life of a model citizen, goes to work every day and to my knowledge has not used any illegal

substances or been in any kind of legal trouble in the past six years. He truly has turned his life around in a very positive way, and I am proud to call him my friend.”

23. Diamond offered letters of reference from five persons who were not called to testify at the administrative hearing: Mark Carvalho, James Davino, Debbie Elton, William Hitchcock, and Michael Smith. Each of these persons had knowledge of Diamond, his past legal problems and past substance abuse. Each believed him to be of good moral character and each described positive changes in Diamond since his release from state prison in 1997.

24. Diamond submitted documentary evidence which corroborated his testimony concerning the continuing education he has taken in the accounting field since 2003.

25. Diamond testified in a candid fashion about his problems in the 1980s and 1990s, how he came to recognize that his lifestyle was unrewarding self-defeating, and the efforts he has made to rehabilitate himself.

Diamond disclosed all his convictions in his most recent application for licensure as a public accountant, and it was not established that he was anything other than forthright in the application he previously filed with the Board (which was denied).

Diamond’s early path towards recovery from substance abuse had a familiar theme – attending numerous AA and NA meetings. However, Diamond determined that he did not need the formal structure associated with those self-help programs and sought a more personal path towards recovery. That self-directed path has included maintaining a steady residence, maintaining gainful employment, attending occasional NA meetings, taking time to meditate in the mornings, a daily regimen of physical exercise, being with family on a frequent basis, staying at home on weekday nights, going to sporting events with friends on the weekends and, most importantly, severing all ties with all persons, places and things he associated with his previous drug use. Diamond occasionally drinks a beer (he testified has had as many as four beers on one occasion, the 2005 SuperBowl) and has a glass of wine with his family on special holidays. Diamond acknowledged that AA and NA programs claim the infrequent consumption of alcoholic beverages is a “slippery slope” that usually results in a return to alcoholism or drug addiction, but so far Diamond said he has not resumed the use of illegal drugs and he said he has not become intoxicated on those infrequent occasions when he consumes alcoholic beverages.

Diamond has not been arrested for any crime since he was released from state prison in December 1997. Diamond successfully completed his parole. No evidence was offered to establish Diamond made any effort to expunge his criminal convictions under Penal Code section 1203.4.

The most impressive part of Diamond’s presentation concerning his rehabilitation – apart from the fact that he has had no adverse encounters with the law since his release from state prison in December 1997 – was Diamond’s thoughtful and compelling testimony itself. Diamond was not defensive about his past; he was sincere and totally open about his current

situation, and his description of his rehabilitation program demonstrated considerable self-awareness.

Evaluation

26. California Code of Regulations, title 16, section 99.1 sets forth the Board's criteria to evaluation an applicant's present eligibility for a license. Relevant factors related to Diamond's rehabilitation are summarized below and are set forth more fully in Factual Findings 15-25.

Diamond developed enormous substance abuse problems in the 1980s which resulted in alcoholism and an addiction to crack cocaine and crystal meth. The nearly inevitable outcome of this lifestyle included Diamond's acquisition, possession and sale of stolen cars and other theft-related activities from the mid-1980s through the mid-1990s. Over that decade, Diamond was convicted of two theft-related felonies, for which he spent time in state prison, and three theft-related misdemeanors, for which he was promptly returned to state prison on a parole violation. Diamond was convicted of several other offenses involving the excessive use of alcohol or the attempt to acquire illegal drugs.

Diamond was in his mid-thirties when he suffered these problems. He was old enough that he should have known better. Diamond engaged in a pattern of drug-seeking, irresponsible criminal behavior for the better part of a decade. After being convicted, he violated terms of his probation and the terms of his parole. Diamond was not a good citizen.

Clearly, this is not the kind of behavior the public expects of a person who seeks to hold a certificate as a certified public accountant, a position of trust requiring the utmost honesty and fidelity to ethical principles. Any one of the theft-related offenses, by itself, provides cause to deny Diamond licensure as a certified public accountant. However, rehabilitation is measured not only by an applicant's entire criminal history, but also by what the applicant has done more recently. Rehabilitation in this matter was established by Diamond's sincere testimony and by the testimony and other evidence offered by those who know him best.

Diamond has not been arrested since December 1997, which is entirely consistent with his claim of freedom from the use of illegal drugs and the moderate use of alcoholic beverages. He has maintained a stable residence and has maintained gainful employment, which is inconsistent with an addiction to illegal drugs or alcoholism. He was forthright in disclosing his criminal background when he was offered employment and when he filed his applications for licensure with the Board. Those persons who know Diamond best – his family and friends – described the constructive and positive evolution of Diamond's attitudes and activities. While Diamond's current program in dealing with his alcohol and drug-related problems is somewhat unique, it appears to be working.

Under all the circumstances, it is concluded that Diamond's period of sobriety and his state of rehabilitation have advanced to the point where it would not be contrary to the public

interest to issue a probationary certificate to Diamond provided he meets certain conditions precedent including a favorable psychological assessment and determination that he does not currently pose a risk to the public if he were to be licensed and passing a Board-approved ethics course. Any probation will be for a period of five years, and conditions of probation should include reporting requirements, Board-approval of Diamond's employment, the obligation to disclose to any prospective employer his criminal background, a requirement that any employer agree to exercise close supervision over Diamond, a prohibition against self-employment and solo practice, and an obligation to cooperate with the Board while on probation, and random drug testing.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. The standard of proof is a preponderance of the evidence. See, *California Administrative Hearing Practice* (Second Edition), "The Hearing Process," sections 7.51-7.53, pp. 365-367, and the cases cited therein.

Applicable Statutes

2. Business and Professions Code section 480 provides in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime . . .

. . .

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made"

3. Business and Professions Code section 5100 provides in part:

"After notice and hearing the board may . . . refuse to renew any permit or certificate . . . for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant"

4. Business and Professions Code section 5110 provides in part:

“(a) After notice and an opportunity for a hearing, the board may . . . deny an application for a license or registration to any individual who has committed any of the following acts:

...

(4) Any act that if committed by an applicant for licensure would be grounds for denial of a license or registration under Section 480 or if committed by a licensee or a registrant would be grounds for discipline under Section 5100”

Substantial Relationship

5. A statute can constitutionally bar a person from practicing a lawful profession only for reasons related to his fitness or competence to practice that profession. The state’s power to regulate a profession cannot be used arbitrarily to penalize conduct having no bearing upon fitness for its practice. The requirement of such a relation is constitutionally mandated. Whether this requirement tying the conduct to the fitness or competence to practice a profession is termed a “nexus” or a “relationship,” the inherent meaning is the same. There must be a logical connection between the conduct complained about and one’s fitness or competence to practice the profession or to the qualifications, functions, or duties of the profession in question. See, *Clare v. California State Board of Accountancy* (1992) 10 Cal.App.4th 294, 302.

Applicable Regulation re Substantial Relationship

6. California Code of Regulations, title 16, section 99 provides in part:

“For the purposes of denial . . . of a certificate or permit . . . a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant . . . if to a substantial degree it evidences present or potential unfitness of a certified public accountant . . . to perform the functions authorized by his certificate . . . in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Fiscal dishonesty or breach of fiduciary responsibility of any kind”

Rehabilitation

7. Rehabilitation is a “state of mind.” The law looks with favor upon rewarding one who has achieved reformation and regeneration with the opportunity to serve. See, *Pacheco v. State Bar* (1987) 43 Cal. 3d 1041, 1058. And, the evidentiary significance of an applicant’s misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. *Kwasnik v. State Bar* (1990) Cal. 3d 1061, 1070.

Applicable Regulation re Rehabilitation

8. California Code of Regulations, title 16, section 99.1 provides in part:

“When considering the denial of a certificate or permit under Section 480 of the Business and Professions Code . . . the board, in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension or revocation.
- (3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the applicant or licensee.”

9. Relevant information related to Diamond’s rehabilitation is summarized in Factual Finding 26 and is set forth more fully in Factual Findings 15-25.

Cause Exists to Deny the Application

10. Cause exists to deny Diamond’s application for an unconditioned license as a certified public accountant under Business and Professions Code section 480. However, Diamond established sufficient rehabilitation to conclude that it would not be contrary to the public interest to issue him a probationary license, provided he first meets certain conditions precedent any license is issued on a probationary basis, as is outlined in Factual Finding 26.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

Derrick Hunter Diamond's application for the issuance of an unrestricted certified public accountant license, which was filed with the California Board of Accountancy on May 19, 2003, is denied; provided, however, that Derrick Hunter Diamond shall be entitled to receive a five year probationary certified public accountant license, the issuance of which shall be subject to meeting the following conditions precedent.

Conditions Precedent: Before the issuance of any probationary license, Derrick Hunter Diamond shall present himself to a competent licensed psychologist or to a competent licensed psychiatrist, who has previously been approved by the Board, for a psychological evaluation including, but not limited to, an assessment of his past substance abuse and his current status. Further, before the issuance of any probationary license, the Board-approved psychologist or psychiatrist evaluating Derrick Hunter Diamond shall provide the Board with a comprehensive narrative report discussing Derrick Hunter Diamond's current psychological diagnosis and prognosis, together with a finding that the issuance of a probationary certified public accountant license to Derrick Hunter Diamond will not pose a substantial risk of danger to the public on the basis of any psychological or psychiatric condition.

Before the issuance of any probationary license, Derrick Hunter Diamond shall take and pass with a score of 90 percent or better a Board-approved ethics examination within six (6) months of the effective date of this Decision.

Upon the Board's receipt of a favorable psychological/psychiatric report and upon the Board's receipt of evidence that Derrick Hunter Diamond has taken and passed the Board-approved ethics examination in a timely manner, a probationary license shall be issued to Derrick Hunter Diamond upon the terms and conditions of probation as set forth below.

The certified public accountant license issued to Derrick Hunter Diamond shall immediately be revoked; however, the order of revocation shall be stayed and the license issued to Derrick Hunter Diamond (hereafter respondent) shall be placed on probation for a period of five (5) years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

2. Written Notice of Any Arrest

If respondent is arrested for any offense while he is on probation, he shall immediately report the fact of his arrest to his Board probation monitor within forty-eight hours of his arrest. Respondent shall disclose the date of his arrest, the charges for which he

was arrested, the identity and address of the arresting agency, and any date he is required to appear in court. The failure to make a timely report shall constitute a violation of probation.

3. Approval of Employer

Before accepting any employment as a licensed certified public accountant with any person or accounting firm, respondent must first provide his prospective employer with a copy of the Board's Decision in this matter. Respondent shall provide the Board with the prospective employer's written acknowledgement that the prospective employer has read the Decision in this matter, is aware of the terms and conditions of probation, and agrees to provide respondent with close supervision before Board-approval is given. Respondent's employment shall be limited to those persons or accounting firms who have been approved by the Board before respondent starts his employment.

4. Supervised Practice

Respondent shall submit to the Board or its designee for its prior approval a plan of practice in which his practice shall be closely monitored by another CPA or PA who shall provide periodic reports to the Board or its designee. Respondent shall pay all costs for such monitoring.

5. Restricted Practice

Respondent shall be prohibited from self-employment and solo practice.

6. Submit Written Reports

Respondent shall submit, within 10 days of completion of the quarter, written reports to the Board on a form obtained from the Board. Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to respondent's compliance with all the terms and conditions of probation. Respondent shall immediately sign all release of information forms as may be required by the Board or its representatives.

7. Drugs - Abstain From Use

Respondent shall completely abstain from the personal use of all psychotropic drugs except when the same are lawfully prescribed.

8. Drugs - Screening

Respondent shall participate or shall have participated in a drug screening program acceptable to the Board and shall have reports submitted to the Board by the screening program. Respondent is responsible for all costs associated with said screening and reporting.

9. Biological Fluid Testing

Respondent, at any time during the period of probation, shall fully cooperate with the Board or its designee in its supervision and investigation of compliance with the terms and conditions of probation, and he shall, when requested, submit to such tests and samples as the Board or its designee may require for the detection of narcotics, hypnotic, dangerous drugs, or other controlled substances or levels of alcohol. Respondent shall be responsible for all costs associated with this investigation and testing.

10. Personal Appearances

Respondent shall, during the period of probation, appear in person at interviews and meetings as directed by the Board or its designated representatives, provided notification of those interviews and meetings is provided in a reasonable manner.

11. Comply With Probation

Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and he shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of his compliance with probation terms and conditions.

12. Practice Investigation

Respondent shall be subject to, and shall permit, a practice investigation of the respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.

13. Comply With Citations

Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

14. Tolling of Probation for Out-of-State Residence/Practice

In the event respondent should leave California to reside or practice outside this state, respondent must notify the Board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the Board costs, and make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the Board.

15. Violation of Probation

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

16. Completion of Probation

Upon successful completion of probation, respondent's license will be fully restored.

DATED: 12/20/05.

A handwritten signature in black ink, appearing to read "J Ahler", is written over a horizontal line.

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

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**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. SI-2005-30

DERRICK HUNTER DIAMOND
1875 Sherington Place #S-307
Newport Beach, CA 92663

STATEMENT OF ISSUES

Former License No. CPA 41110,

Respondent.

Complainant alleges:

PARTIES

1. Carol Sigmann (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs (Board).

2. On or about May 19, 2003, the Board received an application for reissuance of an accountancy license from Derrick Hunter Diamond (Respondent). On or about May 18, 2003, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on December 28, 2004.

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3. On or about October 12, 1984, the Board issued Certified Public Accountant License number 41110 to respondent. That license expired on August 31, 1986, and was not renewed. On September 1, 1991, the license was cancelled by operation of law pursuant to Business and Professions Code section 5070.7.

JURISDICTION

4. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 480 of the Code provides, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

• • • •

"The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

"(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482."

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1 CAUSE FOR DENIAL OF APPLICATION

2 (Conviction of Crimes Substantially Related to Practice)

3 6. Respondent's application is subject to denial under section 480 in that he
4 was convicted of the following crimes which are substantially related to the qualifications
5 functions and duties of a certified public accountant.

6 7. On or about July 5, 1995, in a criminal proceeding entitled *People v.*
7 *Derrick Hunter Diamond* in Orange County Superior Court, Case Number 94SF0336,
8 Respondent was convicted by plea of guilty to one felony count of violating Penal Code section
9 496(a) (Receiving Stolen Property) and one felony count of violating Vehicle Code section
10 10851 (Grand Theft -- Auto). The circumstances are as follows:

11 a. On December 30, 1993, respondent was in possession of a
12 Volkswagen Van which he knew to be stolen. On April 28, 1994, respondent unlawfully
13 drove a 1991 Ford Escort with the intent to deprive the owner of the vehicle.

14 b. On or about July 5, 1995, Respondent was sentenced to one year
15 and four months in prison with credit for 13 days.

16 8. On or about March 29, 1996, in a criminal proceeding entitled *People v.*
17 *Derrick Hunter Diamond* in Orange County Municipal Court, Case Number CMH 95HM05843,
18 Respondent was convicted by plea of guilty to one misdemeanor count of violating Penal Code
19 section 653f(d) (Solicitation to Commit a Controlled Substance Crime) and one misdemeanor
20 count of violating Penal Code section 853.7 (Violation of Promise to Appear in Court). The
21 circumstances are as follows:

22 a. On or about June 23, 1995, respondent willfully and unlawfully
23 solicited a police officer to commit a violation of section 11352(A) of the Health and
24 Safety Code.

25 b. On or about March 29, 1996, Respondent was sentenced to thirty
26 days in jail with credit for 30 days served in state prison.

27 9. On or about July 16, 1997, in a criminal proceeding entitled *People v.*
28 *Derrick Hunter Diamond* in Orange County Superior Court, Harbor Justice Center, Case Number

1 SH97SM34696, Respondent was convicted after a jury trial of one misdemeanor count of
2 violating Penal Code section 664 - 487(a) (Attempted Grand Theft), one misdemeanor count of
3 violating Penal Code section 484g (Fraudulent Use of Access Card) and one misdemeanor count
4 of violating Penal Code section 484e (Acquire the Access Cards Account Information Without
5 Consent of the Cardholder or Issuer.) The circumstances are as follows:

6 a. On or about June 5, 1997, respondent willfully and unlawfully
7 attempted to take money or property of a value exceeding \$400 from Gary's Island. On
8 or about June 5, 1997, respondent willfully and unlawfully acquired access card account
9 information and used an unlawfully retained access card for the purpose of obtaining
10 money, goods, services or other things of value.

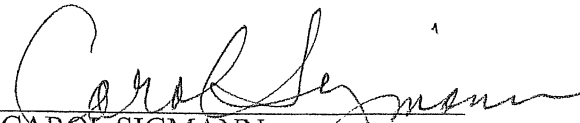
11 b. On or about July 16, 1997, Respondent was sentenced to 180 days
12 in jail with credit for 60 days, and placed on three years conditional probation.

13
14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein
16 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

- 17 1. Denying the application of Derrick Hunter Diamond for an accountancy
18 license;
19 2. Taking such other and further action as deemed necessary and proper.
20

21 DATED: May 31, 2005

22
23 
24 CAROL SIGMANN
25 Executive Officer
26 California Board of Accountancy
27 Department of Consumer Affairs
28 State of California
Complainant